

**CHAPTER I.  
GENERAL RULES**

**RULE 1**

**SCOPE OF RULES**

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**1.2 EFFECTIVE DATE.**

~~These Rules become effective on January 1, 2002. Subsequent Amendments to these Rules become effective on the date of filing.~~ **set forth in the Order adopting the amendments.**

*January 1, 2002, was the effective date of the renumbering of the Local Rules to conform to Fed. R. Civ. P. 83(a)(1). There is no need to continue to refer to that date.*

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**1.6 ELECTRONIC FILING GENERALLY.**

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**(d) Cases Under Seal. When a case is placed under seal, the parties need not seek leave to file any document conventionally in that case.**

*The proposed amendment formalizes Clerk's Policy Directive No. 2. Succeeding subsections are redesignated accordingly.*

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**(j k) Filing and Response Deadlines.** ~~Examples of the operation of the following rules can be found on the Court's website.~~

- (1) Except as to a pleading initiating a case, . . . .

*Examples have proven unnecessary.*

~~(k) **Proposed Orders.** A WordPerfect or Word version of any proposed order attached to a motion filed by a registered user must be e-mailed to the appropriate judge at the same time the motion is filed. The e-mail address is the initials of the judge to whom the proposed order is presented, immediately followed by \_.propord, followed by @mtd.uscourts.gov: for example, xyz propord@mtd.uscourts.gov. A proposed order is required and permitted only with a motion for extension of time or with an unopposed motion.~~

**(k l) Proposed Orders.** A WordPerfect or Word version of any proposed order attached to a motion filed by a registered user must be e-mailed to the appropriate judge at the same time the motion is filed. **Except as otherwise provided in these Rules**, a proposed order is required and permitted only with a motion for extension of time or with an unopposed motion. The e-mail address is the initials of the judge to whom the proposed order is presented, immediately followed by **\_.propord, followed by @mtd.uscourts.gov:** **for example, xyz propord@mtd.uscourts.gov.** **The subject line of the e-mail must contain the first plaintiff's last name, the case number, and an abbreviated description of the document and the moving party, for example, Smith CV 03-289-GF p-ord gr def ext time.**

*The correct e-mail address replaces the current one, which uses "." instead of "\_" and doesn't work. (The underscore is obscured by underlining here but will be readily visible in the published version of the Rules.) The subject-line requirement will enable court staff readily to identify a document they are looking for without opening every e-mail in the Judge's proposed order inbox.*

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## **1.8 PRIVACY POLICY AND PUBLIC ACCESS TO ELECTRONIC RECORDS.**

**(a)** In compliance with the policy of the Judicial Conference of the United States and the E-Government Act of 2002, and in order to promote electronic access to case files while also protecting personal privacy and other legitimate interests, parties shall refrain from including, or shall partially redact where inclusion is necessary, the following personal data identifiers from all documents filed with the court, including exhibits thereto, whether the document is made available electronically or only in paper, unless otherwise ordered by

the Court.

- (1) *Social Security and Driver's License Numbers.* If an individual's social security number or driver's license number must be included in a document, only the last four digits of that number shall be used.
- (2) *Names of Minor Children.* If the involvement of a minor child must be mentioned, only the initials of that child shall be used.
- (3) *Dates of Birth.* If an individual's date of birth must be included in a document, only the year shall be used.
- (4) *Financial Account Numbers.* If financial account numbers are relevant, only the last four digits of these numbers shall be used.

...

**(d) Responsibility for Compliance.**

- (1) The responsibility for redacting these personal identifiers rests solely with counsel and the parties. The clerk will not review each document for compliance with this rule.
- (2) **Where pro se parties submit documents that are described in subsection (a), the clerk may, if redaction is practical, file a redacted version for public access and file the unredacted document under seal. If redaction is not practical, the clerk may file the document under seal. In either case, the clerk shall indicate in the docket text why the document is redacted and/or placed under seal and whether any or all parties or only the Court have access to it. This Rule does not confer any duty on the clerk to ensure that any document is redacted or sealed.**

*This Rule is necessary to allow the clerk to deal with the situation when, for example, a pro se litigant submits a brief or an exhibit that contains the names of minors. The issue arises frequently. The Rule is permissive and not mandatory.*

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## 1.10 ASSIGNMENT OF CASES.

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**(b) Assignment of Division Workload.** For the purpose of allocating the work of the judges, the Chief Judge of the District shall, by order, ~~assign~~ **allocate** each of the Divisions of the Court to one or more of the judges. ~~All motions for orders in cases pending in any Division shall be made to the judge to whom the case is assigned for pretrial proceedings or for trial.~~

*“Assigned” and “referred” are terms of art as used here and in Rule 73. “Assign” denotes jurisdiction to try the case and enter judgment. “Refer” denotes referral to a magistrate judge. Thus, every case is assigned to an Article III judge at opening. Some cases are, also at opening, referred to magistrate judges. Other cases may be referred to a magistrate judge at a later stage. If the parties consent in writing, the case is reassigned to the magistrate judge. To avoid using the term of art in this Rule, “assign” in the first sentence is changed to “allocate.” The second sentence is deleted as wrong, because motions in referred cases should be made to the magistrate judge, not the “assigned” Article III judge. The second sentence is also unnecessary, because these designations are automatic in CM/ECF.*

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**(d) Duties and Powers of Magistrate Judges.** Each United States Magistrate Judge appointed by this Court is authorized to exercise such jurisdiction and perform all the duties prescribed by 28 U.S.C. § 636 and may be ~~assigned~~ **given** any additional duty by this Court that is not inconsistent with the Constitution or the laws of the United States.

*See note to LR 1.10(b). No change in meaning is intended.*

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## CHAPTER II. CIVIL CASES

### RULE 3

#### COMMENCEMENT OF ACTION

##### 3.1 **OPENING FILING A NEW CASE.**

(a) **Required Items.** The following items are required to ~~open~~ **file** a new case:

- (1) a complaint, petition, or other originating document;
- (2) unless the originating document is a petition for writ of habeas corpus, payment of the full amount of the filing fee or a motion to proceed in forma pauperis pursuant to 28 U.S.C. § 1915(a); and
- (3) a civil cover sheet, unless the plaintiff or petitioner is proceeding pro se.

*Proposed amendments are stylistic.*

(b) **Conventional Filing.** Any attorney or party may ~~open~~ **file** a new case by mailing or personally delivering to the Clerk of Court each of the required items. All required items must be received simultaneously; otherwise, one or more items may be returned without filing or other record of submission. Documents may be submitted either in paper form or in PDF form on disk or CD-ROM. ~~The case will be opened immediately upon~~ **The filing date will be the date of** the clerk's receipt of the required materials. A Notice of Electronic Filing will be electronically issued to registered users and mailed or otherwise delivered to counsel or parties who are not registered users. **For purposes of commencing a new action pursuant to this Rule, an attorney need not move for leave to file the complaint conventionally and need not file a notice of conventional filing.**

*The proposed amendment does two things. First, by clarifying the filing date, it permits the clerk to delay entering a new case into the electronic filing system if all required materials are received late in the workday. A complaint is deemed filed on the day it is received by the clerk's office, regardless of the date the documents are*

entered in the filing system. *See, e.g., Loya v. Desert Sands Unified Sch. Dist.*, 721 F.2d 279, 280-81 (9th Cir. 1983); *United States v. Dae Rim Fishery Co.*, 794 F.2d 1392, 1395 (9th Cir. 1986).

Second, the proposed amendment clarifies that, regardless of whether an attorney is a registered user or not, a complaint may always be filed conventionally. A complaint that is not filed by the clerk on the grounds that it does not comply with a local rule – for instance, because it is not accompanied by a Notice of Conventional Filing – is still deemed filed on the date the clerk originally receives it. *See Loya*, 721 F.2d at 280. Rather than create false issues, the proposed Rule cuts through the special rules that govern electronic filing.

(c) **Electronic Filing.** Any attorney or party who is authorized to file documents with the Court electronically may ~~open~~ **file** a new case by:

- (1) Faxing or e-mailing a completed civil cover sheet to the Clerk of Court;
- (2) Obtaining a case number from the clerk; ~~and~~
- (3) **Paying the filing fee or stating that a motion to proceed in forma pauperis will be filed; and**
- (4) Electronically filing the complaint, petition, or other originating pleading ~~and paying the filing fee immediately upon~~ **within one business day of** receipt of the case number. **The filer must attach the civil cover sheet to the complaint as an exhibit. Failure to timely file the complaint may result in deletion of the case and the filer may be required to start the process over.**

*Despite previous use of the word “immediately,” some attorneys have delayed filing the complaint for more than a day – or longer – after the clerk’s office provides a case number and opens an electronic “shell” so that a complaint may be filed electronically. Delay can cause statistical errors and confusion as to whether a case exists or not. Other proposed changes are stylistic or added for clarification.*

(d) **Complaints Accompanied by Motions to Proceed In Forma Pauperis.**

- (1) **A complaint that is accompanied by a motion to proceed in forma pauperis is deemed lodged until the motion is decided.**

- (2) When a motion to proceed in forma pauperis is granted, the complaint is deemed filed on the date the complaint was lodged, except where an earlier filing date is provided by law.
- (3) When a motion to proceed in forma pauperis is denied, the movant shall be given a specified time of not less than ten business days to pay the full filing fee.
- (A) If full payment is timely received, the complaint is deemed filed on the date the complaint was lodged, except where an earlier filing date is provided by law.
- (B) If full payment is not timely received, the action is dismissed.

*This Rule standardizes the procedure and defines filing dates where a litigant moves to proceed in forma pauperis ("IFP"). Case law provides that the filing date of a complaint is the date the pleading and motion to proceed IFP are received by the clerk. When forma pauperis status is granted, there is no question about the proper filing date. However, when leave to proceed IFP is denied, it is necessary to give the moving party notice and an opportunity to pay the fee in order to preserve the filing date. Only where IFP status is denied and the fee is not paid does the litigant lose the filing date.*

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### **3.4 PETITIONS FOR WRIT OF HABEAS CORPUS FILED BY STATE PRISONERS.**

**Pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts, the clerk shall serve on the Attorney General for the State of Montana a copy of each § 2254 habeas petition filed in this Court. This Rule does not confer an obligation on the Attorney General to make an appearance in the case.**

*Rule 4 of the Rules Governing Section 2254 Cases is intended to assist the State in determining whether a given petition is second or successive and to let it know of a potential need to respond. The last sentence of the proposed rule reflects the fact that an answer or motion is never required in a 2254 case unless and until ordered by a judge.*

## RULE 6

### TIME

#### ~~6.1—COMPUTATION.~~

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~~Time for filing shall be computed according to Federal Rule of Civil Procedure 6. Where service is made by means other than hand delivery, time shall be extended as provided in Federal Rule of Civil Procedure 6(e).~~

#### ~~6.2—EXTENSIONS OF TIME.~~

~~(a) Extensions of time to further plead or file briefs or to continue a hearing may be granted by order of the Court upon written motion. The movant shall note that opposing counsel has been contacted concerning the extension or continuance, and whether opposing counsel objects to the extension or continuance.~~

~~(b) All requests for extension of time or continuance shall be accompanied by a proposed order, separate from the motion. Registered users shall attach the proposed order to the motion under the heading “Text of Proposed Order” and shall also e-mail a WordPerfect or Word version as set forth in L.R. 1.6(k). Conventional filers must include sufficient addressed, stamped envelopes for the clerk to serve all conventional filers.~~

#### Reserved.

*With the proposed amendment at Local Rule 7.1(j)(3), there is no part of this Rule that is not covered in the Federal Rules of Civil Procedure or elsewhere in the Local Rules. It is proposed for deletion in its entirety. It will be noted as “reserved” in the event that changes to the timing provisions of the Federal Rules in 2008 require a local rule.*



## RULE 7

### MOTION PRACTICE

#### 7.1 MOTIONS.

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(e) Principal briefs ~~may~~ **must** not exceed twenty (20) pages, excluding exhibits, any table of contents, and certificate of service, unless the filing party has obtained prior leave of Court. If filed without leave, overlength briefs will not be considered by the Court. Briefs exceeding twenty (20) pages shall have a table of contents and a table of cases with page references. CM/ECF filers must check the Court's website or call the help desk to determine whether an overlength brief must be divided into segments before filing. **Filing serial motions in order to avoid the page limitation may result in denial of all such motions.**

*The last sentence warns attorneys to seek leave to file an overlength brief rather than simply filing serial motions that total more than 20 pages. Where an overlength brief is authorized, the filing party may be required to divide the brief into segments of a certain byte-size. Either the Court's website or the help desk should be able to provide guidance. Other changes are stylistic.*

...

(h) The Court may, in its discretion, order or allow oral argument on any motion or other proceeding in open court or by video conference or telephone conference call, provided that all conversations of all parties are audible to each participant and the Court. The Court may direct which party shall **arrange for and/or** pay the cost of the call.

*This amendment clarifies that a party may not leave it up to the Court to make the arrangements.*

(i) Failure to file briefs within the prescribed time may subject any motion to summary ruling. The moving party's failure to file a brief shall be deemed an admission that the motion is without merit. **Except where a pro se litigant files a motion for the appointment of counsel,** failure to file a brief by the adverse party shall be deemed an admission that the motion is well taken. The practice of filing motions to dismiss without

a brief in support in order to gain additional time to respond may be viewed by the Court as a violation of Fed. R. Civ. P. 11.

*No purpose is served by deeming an opposing party's failure to respond to a pro se litigant's motion for counsel to be an admission of the motion's merit.*

~~(j) Within the text of each motion submitted to the Court, the moving party shall note that other parties have been contacted concerning the motion and whether other parties object to the motion. Unopposed motions shall be accompanied by a proposed order, separate from the motion. Registered users shall attach the proposed order to the motion under the heading "Text of Proposed Order" and shall also e-mail a WordPerfect or Word version as set forth in L.R. 1.6(k). Conventional filers must include sufficient addressed, stamped envelopes for the clerk to serve all conventional filers.~~

**(j) Prerequisites to Filing a Motion.**

- (1) Prior to filing any motion, a party must confer with all other parties to determine whether they will oppose the motion. The text of the motion, when filed, must state that other parties have been contacted and state whether any party objects to the motion. Parties that have not yet appeared in the action or whose default has been entered need not be contacted.**
- (2) When a motion is unopposed, the word "unopposed" must appear in the title of the motion. A proposed order must be attached to the motion as an exhibit. Registered users shall attach their proposed orders to the motion as an exhibit, so that the proposed order is filed in the record of the case, and shall also e-mail a WordPerfect or Word version, as set forth in L.R. 1.6(k), so that the judge may alter the proposed order.**
- (3) Any motion for extension of time must be accompanied by a proposed order. Registered users shall attach their proposed orders to the motion as an exhibit, so that the proposed order is filed in the record of the case, and shall also e-mail a WordPerfect or Word version, as set forth in L.R. 1.6(k), so that the judge may alter the proposed order.**
- (4) Failure to comply with this Rule may result in summary denial of the motion. Denial must be without prejudice on the first occasion and the**

**filer must be given an opportunity to refile the motion.**

*Parties still frequently fail to comply with this Rule. One purpose of the Rule is to ensure that the parties talk to each other before any motion is filed. The second purpose is to alert the Court to unopposed motions. The proposed amendment also puts together in one Rule the only two occasions when a proposed order should be attached to a motion: when the motion is unopposed, and when the motion seeks an extension of time. The envelope requirement for conventional filers is deleted as impractical.*

(k) Where the Court denies a motion “subject to renewal,” the renewed motion must be accompanied by an original brief and any exhibits referred to therein. Previously filed briefs may not be incorporated by reference.

## **7.2 EXHIBITS TO MOTIONS.**

~~(a) Parties shall submit as exhibits only those documents or items that are directly germane to the matter under consideration by the Court. Exhibits must be attached to the brief in support of the motion, and each exhibit must be labeled by number or letter. If an exhibit contains more than one page, each page of the exhibit must be numbered. References to exhibits must include specific page numbers. Use of a Bates stamp, PDF Bates stamp, or similar device is strongly encouraged. Excerpted material must be prominently identified as such.~~

**(a) Generally. Exhibits must be electronically filed so as to allow the Court and the parties to locate easily and refer unambiguously to a specific page of a specific exhibit.**

- (1) Exhibits must be attached to a brief or to a Statement as described in Rule 56.1.**
- (2) If all exhibits total five pages or less, they may be filed together as one attachment to the brief or Statement.**
- (3) If all exhibits total more than five pages, the first page of each exhibit must be labeled by number or letter, and each exhibit must be filed as a separate attachment to the brief or Statement. Each attached exhibit shall be named by label (letter or number) and/or by a short description.**

- (4) Because CM/ECF automatically numbers each page of a document filed electronically, parties need not number each page of an exhibit that is scanned or filed electronically. However, all references to exhibits must include specific and correct page numbers. For example, if Exhibit B is filed as a separate attachment, CM/ECF will necessarily number the third page of it as page 3. The party may then refer in its brief to “Exhibit B at 3” without manually numbering each page of Exhibit B. Where there are five or fewer pages of exhibits and each exhibit is not a separate attachment, that will not be the case. The filing party must modify references in its brief accordingly.
- (5) Only those exhibits that are directly germane to the matter under consideration by the Court may be attached to a motion or Statement.
- (6) Excerpted material must be prominently identified as such.

*It is consistently difficult to refer to the electronic record with precision and clarity. Electronic filing should make it easier to do so, if parties plan ahead and file their exhibits with electronic filing in mind.*

~~(b) Except as these Rules otherwise provide, registered users must file exhibits in electronic form. A party may move for leave to file an exhibit in CD-ROM or non-electronic form by describing the exhibit and explaining why it cannot be filed in electronic form. Form A, Notice of Conventional Filing of Document or Item, may be used for this purpose. The Court’s website provides guidance regarding what constitutes an exhibit too large to file or scan and other ways of handling exhibits. The following exhibits may be filed in either CD-ROM or in non-electronic form, but not both, without prior leave of court:~~

- ~~(1) — exhibits that are too lengthy to file or scan;~~
- ~~(2) — exhibits that are oversized, such as blueprints or maps;~~
- ~~(3) — administrative records; or~~
- ~~(4) — trial exhibits.~~

~~(c) Copies of exhibits filed in non-electronic form must be conventionally served on~~

all parties.

**(b) Registered Users. Exhibits must be filed electronically whenever possible.**

**(1) Except as provided by Rule 1.6(d) for cases under seal, a registered user must electronically file Form A, Notice of Conventional Filing of Document or Item, whenever an exhibit is filed conventionally, and the exhibit must be conventionally served on all parties.**

**(2) The following exhibits may be filed conventionally without prior leave of court:**

**(A) exhibits that are too lengthy to file or scan, as defined by the Clerk's Office Administrative Manual;**

**(B) exhibits that are oversized, such as blueprints or maps;**

**(C) administrative records;**

**(D) photographic or videotape exhibits; or**

**(E) trial exhibits.**

**(3) A registered user must obtain leave to file conventionally any exhibit not described in subsection (b)(2). The motion must describe the exhibit and the form in which it will be filed (paper, CD-ROM, etc.) and must explain why it cannot be filed electronically. Form A may be adapted for this purpose.**

*Proposed amendments are intended for clarification. Additionally, photographs and videotapes are included in the category of materials that may routinely be filed conventionally.*

**(c) Voluminous Exhibits. The filing party must serially number each page of an exhibit or set of exhibits that is too voluminous to file electronically.**

*Only exhibits that will not be filed in CM/ECF must be page-numbered. Cf. proposed Rule 7.2(a).*

### 7.3 MOTIONS FOR RECONSIDERATION.

**(a) Leave of Court Required.** Before the entry of a judgment adjudicating all of the claims and the rights and liabilities of all the parties in a case, any party may make a motion before a Judge requesting that the Judge grant the party leave to file a motion for reconsideration of any interlocutory order made by that Judge on any ground set forth in Rule ~~7.2(b)~~ **7.3(b)**. No party may file a motion for reconsideration without prior leave of Court.

*Correction of a technical error.*

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### 7.4 ~~MOTIONS TO FILE UNDER SEAL TO RELY ON A SEALED DOCUMENT, SEALED MOTIONS, AND EX PARTE MOTIONS.~~

*The current Rule is deleted in its entirety and replaced by the following:*

#### **(a) Definitions. As the terms are used in these Rules:**

- (1) A sealed document is any document not available to public access. Such a document may be accessible to other parties to the case, or it may be accessible only to the filing party, or it may be accessible only to the Court. All filed documents are accessible to and may be relied on by the Court. Examples of sealed documents might include exhibits that contain medical or trade secret information or documents submitted for *in camera* inspection.**
- (2) A motion for leave to rely on a sealed document is a motion asking the Court to permit the parties to rely on a document that is filed under seal without prior leave of Court.**
- (3) A sealed motion is a motion that is itself sealed, such as a pro se party's request for a subpoena for a rebuttal witness.**
- (4) An ex parte document is a document, such as an affidavit in support of a motion to withdraw as counsel, that is partially sealed so as to be accessible only to the Court and the filing party.**

(b) Procedure for Filing Document Under Seal.

(1) Registered Users. A registered user may file a document under seal without obtaining prior leave of Court. Filing the document under seal constitutes a certification by the filing attorney, pursuant to Fed. R. Civ. P. 11, that the document is appropriately sealed. To file a document under seal, the attorney must:

(A) file in the public record a motion for leave to rely on sealed document, setting forth the reason(s) the sealed document should not be accessible to the public and specifying which parties have or should have access to the sealed document; and

(B) file the sealed document as the next document in the case and link it to the motion for leave to rely on sealed document.

(2) Conventional Filers. A document or item requested to be sealed shall be submitted to the clerk in a sealed envelope with the case number, date, and "Filing Under Seal Requested" clearly printed on the envelope. The envelope must be accompanied by a motion for leave to rely on the sealed document.

(c) Effect of Sealing.

(1) No document may be relied on by the filing party unless the Court grants leave to rely on the document or seals the document *sua sponte*.

(2) No case may be initiated or conducted under seal unless expressly authorized by statute, such as a *qui tam* action, or unless the Court grants leave to seal the case or seals the case *sua sponte*.

(d) Order on Motion to Rely on Sealed Document.

(1) If leave to rely is granted, the sealed document is a part of the record for all purposes and any party that has access to it may rely on it.

(2) If leave to rely is denied, the filing party may:

(A) forego all reliance on the document; or

(B) refile the document in the public record of the case.

(e) Sealed Motions. A sealed motion may be filed only if expressly authorized by statute, rule, or other law or authorized by a prior ruling of the Court. Authority for sealing such a motion must be set forth in the title of the motion, for example, "Sealed Motion for Subpoena Pursuant to Court's Order of May 17, 2007."

(f) A sealed document or item must be served on all other parties to the case unless ex parte filing is authorized by the Court or by statute, rule, or other law.

*These amendments are necessary to clarify what happens when documents are sealed and when and how they may be sealed.*

*Before case files were electronic, if a party wanted to file a document under seal, the document was "lodged" on the left side of the case file in an envelope, and a motion for leave to file under seal was "filed" on the right side of the case file. If the motion was granted, the "lodged" document was placed on the right side of the file, still in the envelope. Whether the motion was granted or denied, the document remained in the case file.*

*With electronic filing, a document is either filed or it isn't. It is impossible to preserve a document for appellate review without placing it in the electronic case file. (It could be held in conventional form, but a conventional document is far more likely to be lost – or mistakenly filed in the public record – now that everyone is accustomed to dealing with an electronic file.) All documents that the filing party wishes to have sealed will remain in the electronic case file under seal, regardless of whether a judge approves sealing. That is the only way to preserve the document, as originally presented to the Court, for appellate review. However, the proposed Rules makes it clear that the filing party may not rely on the sealed document unless sealing is ratified after the fact by the judge's granting of the motion for leave to rely on sealed document.*



## RULE 11

### SIGNING OF PLEADINGS, MOTIONS, AND OTHER PAPERS; REPRESENTATIONS TO COURT; SANCTIONS

#### 11.1 ATTORNEY SIGNATURES IN ELECTRONIC FILINGS.

(a) A registered user's log-in and password serve as the user's signature on all documents electronically filed with the Court and as a signature for purposes of Fed. R. Civ. P. 11, ~~the local rules of this Court~~ **these Rules**, and any other purpose for which a signature is required in connection with proceedings before the Court.

*Stylistic change.*

~~(b) The signature in each document filed electronically, where an original hand signature would otherwise appear, must be in the following form:~~

**(b) Except as provided by Rule 11.2, where a hand signature would otherwise appear, each document filed electronically by a registered user must be signed "/s/ John E. Attorney."**

*The point of this Rule is to create a standardized electronic signature. Other aspects of the signature block, such as the firm name or the party represented, are not significant. There is no need for standardization of the signature block. The current mandatory form for it is therefore deleted.*

(c) A registered user shall not knowingly permit or cause his or her log-in and password to be used by anyone other than an authorized agent of the registered user. If a registered user has reason to suspect that the security of his or her log-in and password have been compromised, the clerk must be contacted immediately.

**(d) Only a judge or an attorney may use the "/s/" signature form, and, except as provided by Rule 11.2(a), only when signing the document as the filer. All other signatures, including those on any affidavit, must be hand signatures.**

*This proposed new Rule clarifies when the /s/ form is permissible and when it is not. Affidavits, for example, must be conventionally signed and scanned, even if the*

*affiant and notary public are both registered users.*

## **11.2 ELECTRONIC FILING OF JOINTLY FILED DOCUMENTS OR DOCUMENTS REQUIRING MULTIPLE SIGNATURES.**

**In no event shall one signature page be signed in the “/s/” electronic form by one party and by hand signature by another party. For purposes of filing documents requiring more than one signature, any registered user may choose to use a hand signature rather than the “/s/” form.** Documents requiring signatures of more than one party shall be filed by one party in one of the following ways:

- (a) Where all signers are registered users and where all consent to the filing, by using the “/s/” electronic signature as to all parties;**
- ~~**(b) Using the “/s/” electronic signature as to the filing party only, using blank signature lines followed by the information required by L.R. 11.1 as to the other parties, and representing in the text of the document that all parties whose signature lines appear in the document have consented to its filing;**~~
- ~~**(c) Identifying on the document when filed the parties whose signatures are required and stating that each party will file a notice of endorsement within three (3) business days of the document’s filing, with each party timely filing its own notice of endorsement;**~~
- ~~**(d) Where all signers are conventional filers, by presenting to the Clerk one document bearing the original signature of each signer;**~~
- (b) Where all signers use hand signatures, by scanning the document and filing it electronically without the “/s/” signature by any party;**
- (a c) By scanning one or more identical documents with hand signatures the signature page and attaching each document it as an exhibit to the a document bearing the registered user’s “/s/” electronic signature; or**
- (e d) By using any other method prescribed by the Clerk of Court.**

*There has been some confusion about how to comply with Rule 11.2. The proposed amendments are intended to simplify the permitted procedures. The first*

*sentence is added to ensure that an attorney will not add the /s/ signature after scanning a document bearing a hand signature. Such a practice would put the Court in the position of relying on a document that clearly was altered after the conventional filer signed it. Consequently, that possibility is foreclosed. The second sentence permits attorneys to use hand signatures, if they prefer, on documents such as stipulations. A conforming amendment is made to Rule 11.1(b).*

*Proposed new subsection (a) would permit one attorney to use the “/s/” signature form to represent the signatures of other attorneys, provided all signers are registered users and provided they all consent to the filing; a conforming amendment is made to Rule 11.1(d). This practice should be permissible because the Court always knows who electronically filed the document and therefore who is responsible for representing everyone else’s signature. Proposed new subsection (b) reflects the second sentence of Rule 11.2; thus, several attorneys may file one stipulated dismissal that contains nothing but hand signatures. Current subsections (b), (c), and (d) are deleted as unnecessary.*

## **RULE 12**

### **DEFENSES AND OBJECTIONS**

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#### **12.3 NOTICE AND WARNING TO PRO SE PRISONER-PLAINTIFF.**

**In all cases where a prisoner-plaintiff, as defined in Rule 56.2(d), is proceeding pro se, any motion that requires the Court to consider matters outside the pleadings, such as a motion to dismiss for failure to exhaust administrative remedies, shall be accompanied by the Notice and Warning to Plaintiff as set forth in Rule 56.2(b). For purposes of this Rule, Rule 7.1(c), allowing a party to file a brief in support within five (5) days of filing a motion, does not apply. Motions and briefs in support must be filed and served simultaneously with, but separately from, the Notice and Warning. Failure to comply with this Rule may result in summary denial of the motion.**

*Wyatt v. Terhune, 315 F.3d 1108, 1120 n.14 (9th Cir. 2003), requires this notice. It is placed under this Rule because, under Wyatt, a motion to dismiss for failure to exhaust administrative remedies is an unenumerated Fed. R. Civ. P. 12(b) motion.*

## RULE 16

### PRETRIAL PROCEEDINGS

#### 16.1 PRETRIAL CONFERENCE.

...

(d) Settlement Conferences. The judge to whom a civil case is assigned or referred may, upon the motion of any party or upon the judge's own motion, order the parties to participate in a settlement conference.

- (1) ~~The judge to whom a civil case is assigned may, upon the motion of any party or upon the judge's own motion, order the parties to participate in a settlement conference to be convened by the Court. Unless ordered otherwise, each party, or a representative of each party with authority to participate in settlement negotiations and to effect a complete compromise of the case, is required to attend the settlement conference. The judge may, in his or her discretion, preside over the settlement conference.~~
- (2) ~~Prior to the commencement of the settlement conference, a confidential settlement brochure, no more than ten (10) double-spaced pages in length (excluding exhibits or appendices) must be submitted to the settlement judge. The brochure will not be exchanged among the parties, unless the parties agree otherwise. The information contained in the confidential settlement brochure shall not become a part of the court record.~~
- (3) ~~Failure to comply with the conditions of L.R. 16.1(d) (1) and (2) or failure to negotiate in good faith may result in the imposition of sanctions and/or costs of the conference by the settlement judge.~~

*The stricken language is deleted as unnecessarily addressing matters that are covered by existing law or by orders issued when a case is referred for a settlement conference.*

#### 16.2 PRELIMINARY PRETRIAL CONFERENCE.

(a) **Exempt Cases.** Unless otherwise ordered by the judge assigned to the case, the following cases are exempt from the requirements of this Rule:

...

In exempt cases, the assigned judge shall, not later than forty-five (45) days from the date the case is at issue, establish a schedule for final disposition of the case. **In actions brought without counsel, no party may begin discovery until a Scheduling Order has been issued.**

*The amendment will clarify the parties' obligations in pro se cases and avoid the need for litigants to file motions for protective orders against premature discovery requests.*

(b) **Filings Before Preliminary Pretrial Conference.** Each of the following documents must be filed not later than seven (7) calendar days before the preliminary pretrial conference:

- (1) **Preliminary Pretrial Statement.** A statement must be filed by each party and must include:

...

~~(F) — the party's report on early neutral evaluation, as required by L.R. 16.6(B)(1);~~

...

(N) ~~prospects for compromise of the case and the feasibility of settlement~~ **the status of any settlement discussions and prospects for compromise of the case;** and

(O) suitability of special procedures.

*Subsection (F) is deleted in conformity with the revision to Rule 16.6. The proposed amendment to subsection (N) is intended to alter the emphasis. Instead of giving an abstract statement as to the prospect for settlement, parties will be required to report any actual discussion of settlement.*

...

#### 16.4 FINAL PRETRIAL ORDER.

**(a) Preparation and Lodging.** At least two weeks before the final pretrial order is due, Plaintiff's counsel shall convene a conference of all counsel and pro se parties at a suitable time and place for the purpose of preparing ~~the~~ **a proposed final pretrial** order. If any party refuses to cooperate in the preparation of the pretrial order, the opposing party may move the Court for sanctions. On or before the date established in the pretrial scheduling order, a registered user involved in the trial and selected by all parties shall file a proposed final pretrial order signed by all counsel and pro se parties.

**(b) Form and Content.** The final pretrial order shall address the following matters:

(1) *Nature of Action.*

...

(10) **Witnesses.** Each party must identify in **separate witness lists** each witness who **will be called**, and each witness who **may be called**. A witness on either list must be identified by name and address ~~and subject area of expected testimony~~. Witness lists must be in the form set forth in Form E and shall be attached as exhibits to the Proposed Final Pretrial Order.

*The proposed amendment to subsection (a) is stylistic. In subsection (b)(10), the requirement that a subject area for each witness's testimony be identified is deleted as unnecessary. It is usually satisfied by a nondescriptive phrase such as "liability and damages," and the witness information sheets, see Appendix Form J, provide better guidance at trial.*

**(13) Deposition Excerpts and Summaries.** The witness lists should reflect any designated deposition excerpts that either party intends to offer at trial, except for impeachment or rebuttal, and any party's objections to designated deposition excerpts, as well as an indication whether the parties have stipulated to the use of any deposition summary in lieu of reading a deposition transcript.

*This amendment is added to parallel Rule 16.5(b)(2)-(3). See also corresponding*

*amendment to Form D, ¶¶ XIII-XIV.*

~~(13)~~**14) *Estimate of Trial Time.*** An estimate of the number of court days counsel for each party expects to be necessary for the presentation of their respective cases in chief.

**(c) Cases Under L.R. 16.2(a) and 16.3(b).** In cases proceeding under L.R. 16.2(a) or 16.3(b), witness and exhibit lists must be filed and served at the time of the final pretrial conference or, where none is held, not later than seven (7) days before trial. Witness and exhibit lists must be in the form set forth in Appendix A.

## **16.5 FINAL PRETRIAL CONFERENCE.**

...

**(b)** Counsel must have completed all of the following tasks at the time the **proposed** final pretrial order is lodged. In cases proceeding under L.R. 16.2(a) or 16.3(b), these tasks must be completed not less than seven (7) days before the final pretrial conference or, if none is held, not less than seven (7) days before trial:

...

**(5) *Specify Outstanding Evidentiary Objections ~~on Exhibit List~~.*** With respect to unresolved objections, specify any remaining objections in writing set forth on the opposing party's **witness list and** exhibit list. Objections not specified on the exhibit list **and any objections to deposition excerpts or summaries that are not shown on the witness list** will be deemed waived. The lists so prepared must be served and filed with the **proposed** final pretrial order. In cases proceeding under L.R. 16.2(a) or 16.3(b), exhibit and witness lists must be filed and served at the time of the final pretrial conference or, where none is held, not later than seven (7) days before trial.

*Stylistic amendment in subsection (b). Subsection (b)(5) contains amendments conforming to proposed new Rule 16.4(b)(13).*

...

## **16.6 — NEUTRAL EVALUATION.**

*This Rule is proposed to be deleted in its entirety and replaced by the following:*

**16.6 ALTERNATIVE DISPUTE RESOLUTION.**

**(a) Mediation and Evaluation.**

**(1) Pursuant to 28 U.S.C. § 651 et seq., the Court encourages mediation and neutral evaluation as alternative dispute resolution (“ADR”) procedures. Parties must consider using ADR procedures at an appropriate point in the litigation. Parties may engage in ADR with or without the assistance of the Court.**

**(A) Mediation is a non-binding process in which an impartial third party assists the parties in reaching an agreed settlement. The mediator may spend time meeting separately and privately with any party during a settlement conference.**

**(B) Neutral evaluation is a non-binding process in which the parties present summaries of their cases to an evaluator, who assesses the parties’ legal positions and provides them with an impartial evaluation of the case. The evaluator may help the parties identify areas of agreement, provide case planning guidance, and assist in negotiating a settlement.**

**(2) The Chief Deputy Clerk of Court shall annually prepare a statement for the Chief Judge regarding the District’s use of ADR procedures.**

**(b) General Rules.**

**(1) The presiding judge retains case management responsibility at all times. Where a case is referred to a magistrate judge for all pretrial proceedings, the magistrate judge is the presiding judge.**

**(2) Attorneys, participants, mediators, and evaluators must preserve the confidentiality of all communications made in the course of ADR procedures.**



(3) All persons serving as mediators or evaluators under this Rule are performing quasi-judicial functions and are entitled to the immunities and protections accorded by law to persons serving in such capacity.

(4) Obligation of Good Faith.

(A) Each party must ensure that a person with ultimate settlement authority attends and participates in any ADR procedure ordered by the presiding judge.

(B) Failure to participate in good faith may result in the imposition of sanctions against the offending party. The mediator or evaluator or a party may file a motion for sanctions in the record of the case.

(c) Motions and Orders for ADR.

(1) The presiding judge may, at any time, require the parties to participate in mediation or neutral evaluation.

(2) One or more parties may move the presiding judge for an order requiring mediation or neutral evaluation.

(A) One or more parties may suggest a particular individual to act as a mediator or evaluator and advise the Court whether that person has agreed to act.

(B) If the suggested mediator or evaluator is not an employee of the court, the moving party or parties shall set forth the person's proposed compensation, including reimbursement for expenses, and how and when the evaluator is to be paid.

(C) Names of available mediators and evaluators are available from the Chief Deputy Clerk of Court.

(3) The presiding judge will select the mediator or evaluator and may select any person not involved in the case.

(4) The presiding judge or the mediator or evaluator may issue appropriate

**Orders to govern the proceedings. A mediator or evaluator may also set forth the governing procedures in a letter to the parties. Such letters will not be filed in the record of the case.**

*The purpose of the proposed amendment is to continue to comply with the Alternative Dispute Resolution Act of 1998, 28 U.S.C. § 651 et seq., and to simplify the process.*

*Subsection (a) sets forth the District's compliance with 28 U.S.C. § 652(a), which provides that "each district court shall, by local rule . . . require that litigants in all civil cases consider the use of an alternative dispute resolution process at an appropriate stage in the litigation." Mediation and neutral evaluation are both included in the definition of alternative dispute resolution. See 28 U.S.C. § 651(a). The statutory scheme also contains the reporting requirement of proposed subsection (a)(2). See *id.* § 651(d).*

*Subsection (b) sets forth certain background principles for the process.*

*Subsection (c) sets forth the procedure for initiating neutral evaluation in a given case.*

## **RULE 26**

### **DISCOVERY**

#### **26.1 RULE 26(f) CONFERENCE AND DISCOVERY PLAN.**

(a) Except in cases exempted by Federal Rule of Civil Procedure 26(a)(1)(E), or unless otherwise directed, the parties shall confer at least twenty-one (21) days before the preliminary pretrial conference to consider the matters set forth in Federal Rule of Civil Procedure 26(f) and ~~L.R. 16.6(B)(1)~~.

*Conforming amendment. Please see proposed new Rule 16.6.*

#### **26.2 DOCUMENTS OF DISCOVERY.**

(a) Pursuant to Fed. R. Civ. P. 5(d), initial disclosures under Federal Rule of Civil

Procedure 26(a)(1), depositions upon oral examinations and interrogatories, requests for documents, requests for admissions, answers and responses, expert disclosures, ~~and expert reports,~~ **notices of deposition, and notices of service of subpoena, and certificates or notices indicating service of discovery documents on opposing parties** shall not be routinely filed ~~(see Federal Rule of Civil Procedure 5(d)).~~ However, when any motion is filed relating to discovery, the parties filing the motion shall attach as exhibits to the motion all of the documents relevant to the motion if the documents have not been previously filed. ~~Certificates or notices indicating service of discovery documents on opposing parties shall not be filed.~~

*Changes are stylistic and also clarify that notices of deposition and notices of service of subpoena are not to be filed.*

...

## **RULE 54**

### **JUDGMENTS & COSTS COSTS & FEES**

#### **~~54.1 JUDGMENTS PREPARED BY CLERK.~~**

~~Unless the Court otherwise directs, and subject to the provision of Federal Rule of Civil Procedure 54(b), judgment upon the verdict of a jury (except those verdicts mentioned in L.R. 54.2) shall be promptly prepared and filed by the clerk. When the Court directs that a party recover only money or costs, or that all relief be denied, the clerk shall prepare and file judgment upon receipt of the Court's direction. No other judgment shall be entered in the cases provided for in this Rule.~~

#### **~~54.2 JUDGMENTS ENTERED ONLY ON DIRECTION OF COURT.~~**

~~Upon a special verdict or on a general verdict accompanied by interrogatories returned by a jury pursuant to Federal Rule of Civil Procedure 49, and in all cases tried by the Court without a jury, except when the Court directs that a party recover only money or costs or that all relief be denied, the Court will give direction as to entry of judgment, and no judgment shall be filed by the clerk until such direction is given. In the cases provided for~~

~~by this Rule, the prevailing party shall within ten (10) days, unless additional time is granted by the Court, prepare and submit to the clerk a draft of the judgment and serve a copy upon the other party. Each other party shall then have ten (10) days within which to serve and file objections to the form of the proposed judgment. The presiding judge shall review the proposed judgment and take action after all objections have been filed.~~

*Rules 54.1 and 54.2 are deleted because they are confusing and because they suggest that it is common not to enter judgment at the conclusion of a case. Additionally, Rule 54.1 conflicts with Fed. R. Civ. P. 58(a)(2)(A). The title of the Local Rule is changed to reflect only the matters it will actually address if 54.1 and 54.2 are deleted. Please see note following new proposed Rule 58.1.*

### **54.3 1 TAXATION OF COSTS.**

### **54.4 2 ATTORNEY'S FEES.**

## **RULE 56**

### **SUMMARY JUDGMENT**

#### **56.1 MOTIONS FOR SUMMARY JUDGMENT.**

~~(a) Any party filing a motion for summary judgment shall also file a Statement of Undisputed Facts setting forth, separately from the memorandum of law and in full, the specific facts on which that party relies in support of the motion. The specific facts shall be set forth in serial fashion and not in narrative form. As to each fact, the statement shall refer to a specific portion of the record where the fact may be found (e.g., affidavit, deposition, etc.).~~

**(a) Any party filing a motion for summary judgment shall also file a Statement of Undisputed Facts. The Statement must:**

**(1) set forth in serial form each fact on which the party relies to support the motion;**

**(2) cite a specific pleading, deposition, answer to interrogatory, admission or**

affidavit before the Court to support each fact; and

(3) be filed separately from the motion and brief.

~~(b) Any party opposing a motion for summary judgment must file a Statement of Genuine Issues setting forth the specific facts, if any, that establish a genuine issue of material fact precluding summary judgment in favor of the moving party. The specific facts shall be set forth in serial fashion and not in narrative form. As to each fact, the statement shall refer to a specific portion of the record where the fact may be found (e.g., affidavit, deposition, etc.).~~

(b) Any party opposing a motion for summary judgment shall also file a Statement of Genuine Issues. The Statement must:

(1) set forth in serial form each fact on which the party relies to oppose the motion;

(2) cite a specific pleading, deposition, answer to interrogatory, admission or affidavit before the Court to support each fact; and

(3) be filed separately from the motion and brief.

*The proposed amendments are stylistic and are intended to emphasize that each Statement must be supported by specific citations to the record the parties have placed before the Court.*

...

## **RULE 58**

**[new rule]**

## **ENTRY OF JUDGMENT**

### **58.1 ENTRY OF JUDGMENT.**

(a) Except as to orders disposing of motions listed in Fed. R. Civ. P. 58, the Clerk of Court shall enter judgment by separate document at the conclusion of each case.

(b) Time and Manner of Entering Judgment.

(1) When a jury returns a general verdict without special interrogatories or denies all relief, or when the Court awards only costs or a sum certain, the clerk shall promptly enter judgment, in favor of one party and against another party, without awaiting direction by the Court.

(2) In the text of any Order on which it is appropriate for the clerk to enter judgment, the Court shall direct the clerk as to the time and manner of entering judgment. If the Court finally denies all relief in the case but gives no direction as to entry of judgment, the clerk shall enter judgment without awaiting the Court's direction.

(c) The Court may order the prevailing party to file a proposed judgment. Objections to the proposed judgment may be filed within ten (10) days of its filing.

*The practice of entering judgment in the District is not uniform. This Rule sets parameters and places on the presiding judge some responsibility for directing the clerk as to the entry of judgment.*

*"The sole purpose of the separate-document requirement [of Fed. R. Civ. P. 58] ... was to clarify when the time for appeal ... begins to run." Bankers Trust Co. v. Mallis, 435 U.S. 381, 384 (1978) (per curiam). To limit the time for filing a notice of appeal to 30 days after everything is decided (or 60 days where the United States is a party), judgment must be entered by separate document. See Corrigan v. Bargala, 140 F.3d 815, 816 (9th Cir. 1998) ("[t]he time to file a notice of appeal does not begin until the clerk has entered a judgment that complies with the requirements of Rule 58."). Otherwise, a notice of appeal may be filed within 150 days after the Court enters a final order. See Fed. R. App. P. 4(a)(1)(A), (7)(A)(ii); Fed. R. Civ. P. 58(b)(2)(B). Proposed Rule 54.1(a) restates the law, but it alerts the clerks that they should be entering some sort of judgment when a case is over, and if they haven't received direction from chambers, they should seek it out.*

*On the other hand, it is difficult to formulate a comprehensible and comprehensive rule to govern when a clerk enters judgment and what the judgment should say – in particular, whether it should include the phrase "in favor of A and against B." The best solution to the problem of when and how to enter judgment is*

*for the presiding judge to direct the clerk in each case, so far as that is permitted by the Federal Rules of Civil Procedure.*

*When a jury returns a general verdict and there are no special interrogatories, and when the Court orders only costs or a sum certain, the clerk should enter judgment in favor of Party A and against Party B. See Fed. R. Civ. P. 58(a)(2)(A)(i), (ii). Proposed Rule 58.1(b)(1) reflects the Federal Rule. But does the Court “deny all relief,” when, for instance, a case is dismissed without prejudice to refile? A dismissal without prejudice means the Court isn’t deciding anything. Judgment should be entered, but should it be entered in favor of the defendant and against the plaintiff? To resolve the matter, proposed Rule 58.1(b)(2) requires the Court to address the matter of judgment in its final Order. While Fed. R. Civ. P. 58(a)(2)(A)(iii) requires the clerk to enter judgment without awaiting the Court’s direction, the idea here is to have the Court provide some guidance in the final Order. The clerk can’t enter judgment before the final Order is issued anyway, so the Local Rule does not conflict with the Federal Rule. If the Court fails to give direction in a case where it denies all relief, the proposed Rule expressly directs the clerk to go ahead and enter judgment, thus following the Federal Rule. See Fed. R. Civ. P. 58(a)(2)(A)(iii).*

*Proposed Rule 58.1(c) picks up language currently contained in Rule 54.2 and permits the Court to require the prevailing party to submit a proposed judgment. The Court could probably do that anyway, but including the pertinent language here avoids any argument that deletion of Rule 54.2 deprived the Court of the ability to do so. Cf. Fed. R. Civ. P. 58(d).*

...

## **RULE 73**

### **AUTHORITY OF MAGISTRATE JUDGES**

#### **73.1 REFERRAL AND ASSIGNMENT OF CIVIL CASES TO MAGISTRATE JUDGES.**

~~(a) The full-time United States Magistrate Judges of the District of Montana are designated to hear all prisoner civil rights actions, all habeas corpus actions (excluding motions filed under 28 U.S.C. § 2255 or actions for writs filed by federal prisoners), all cases in which one or more plaintiffs are proceeding pro se, and all cases in which leave to proceed in forma pauperis is sought. Except as otherwise provided by order, all such cases~~

shall be assigned to a magistrate judge upon opening. A case will not be reassigned based on a party's change of status after filing.

**(a) Referral on Filing of a New Case.** Except as otherwise provided by Order, the following cases shall be assigned to an Article III judge and referred to a magistrate judge upon filing. The full-time United States Magistrate Judges of the District of Montana are designated to hear:

**(1) all prisoner civil rights actions, all habeas corpus actions (excluding motions filed under 28 U.S.C. § 2255 or actions for writs filed by federal prisoners), all social security actions, all cases in which one or more plaintiffs are proceeding pro se, and all cases in which leave to proceed in forma pauperis is sought. A case will not be reassigned based on a party's change of status after filing; and**

**(2) all cases in which a magistrate judge's name is randomly drawn.**

**(b) Referral After Filing.** Any active Article III judge may **at any time** designate a United States Magistrate Judge to exercise jurisdiction over any other civil case in accordance with 28 U.S.C. § 636 and Chapter IV of these Rules.

*Amendments to this Rule conform with the new procedure of assigning an Article III judge in every case and automatically referring certain cases to the magistrate judge. The new procedure appropriately reflects that only the consent of the parties can confer full jurisdiction on a magistrate judge. There is no change in practice. Reference to Chapter IV is deleted as Chapter IV was deleted a few years ago.*

...

## **73.2 CONSENT ELECTION WHERE CASE IS ~~ASSIGNED~~ REFERRED TO A MAGISTRATE JUDGE.**

**(d a) Anonymity.** Parties are free to give or withhold their consent **to magistrate judge jurisdiction**. No judge will be notified as to the identity of any party giving or withholding consent to the exercise of jurisdiction by a magistrate judge, except when all parties consent.

*There is no substantive change, but this subsection is placed first because it is the*



*primary concern in a consent election. All the procedures set forth below are designed for the purpose of preserving anonymity.*

**(a b) Requirement for Conventional Notice and Filing.** In all cases, the consent election shall be carried out on paper. Returned consent forms **must not be filed but** shall be held under seal in the clerk's office. If all parties consent to magistrate **judge** jurisdiction, each party's consent form will be scanned into the record of the case. If all parties do not consent to magistrate jurisdiction, the returned consent forms will be shredded at the conclusion of the case in this Court.

**(b c) Notice.** When a civil action has been ~~conditionally assigned~~ **referred** to a magistrate judge, the Clerk of Court shall notify the parties of such ~~assignment~~ **referral** and advise them that they may give or withhold consent to the magistrate **judge's** exercise of jurisdiction. In cases that are pre-screened pursuant to 28 U.S.C. § 1915(e)(2), 28 U.S.C. § 1915A(a), 42 U.S.C. § 1997e(c), or Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts, the clerk shall mail the notice and consent election form after all parties ordered to be served have made an appearance. In all other cases, the clerk shall mail the notice and consent election form within ten (10) days of a party's appearance. **At the direction of the Court, the clerk may conduct new consent elections at any time.**

*Amendments to current subsections (a) and (b), proposed subsections (b) and (c), are made in light of the change in referral/assignment procedure and to clarify that a consent election may be conducted more than once in any case.*

~~**(c) Return of consent election forms.** Parties shall have thirty (30) days from service of the notice of assignment to complete and return to the Clerk of Court the consent election form indicating whether they do or do not consent to a magistrate judge's exercise of jurisdiction over the case for any and all proceedings including trial and entry of judgment, pursuant to 28 U.S.C. § 636(e). The Clerk will keep custody of all consent election forms. If all parties give consent, the case will continue before or be reassigned to a magistrate judge. In the event any party withholds consent to the magistrate judge's jurisdiction, the case will be reassigned to an Article III judge.~~

**(d) Return of consent election forms. Parties shall have thirty (30) days from service of the clerk's notice and consent election form to complete and return the form to the clerk. If any party's form is not received within thirty-three days after service, that party shall be deemed to have withheld consent. The clerk will keep custody of all consent election forms. If all parties give consent, the case will be reassigned to a**

**magistrate judge for all purposes, including trial and entry of judgment, pursuant to 28 U.S.C. § 636(c).**

*Amendments to current subsection (c), proposed subsection (d), are intended to clarify that, if a consent election form is not returned, the party is deemed to have withheld consent. This will alleviate the need for the clerk's office to track down forms that are not returned, which has proven difficult in some cases. The final sentence of current subsection (c) is deleted as unnecessary in light of the new assignment/referral procedure.*

**(e) All parties may jointly move for reassignment from an active Article III judge to a magistrate judge, based on each party's written consent as shown in the motion. The Court may, in its discretion, grant or deny such a motion.**

*New subsection (e) permits the parties to move for reassignment where one or more parties fail to timely return their consent election forms by mistake. It also covers the situation when parties are advised that they may obtain an earlier trial date before a magistrate judge.*

## **RULE 77**

### **CLERK OF COURT**

...

#### **77.2 CONVENTIONAL FILING BY THE CLERK.**

(a) Except as otherwise provided by these Rules, the clerk shall file all papers presented for conventional filing by promptly scanning and e-mailing the documents to the clerk's office of the Division where the case is venued.

**(b) Voluminous Exhibits or Documents that Cannot Be Scanned or Filed Electronically.**

**(1) In a habeas or § 2255 case, any party represented by counsel must deliver one copy of voluminous exhibits to the Division where the presiding judge**

sits and one copy to the Missoula Division. For purposes of this Rule, where the case has been referred to a magistrate judge, the magistrate judge is the presiding judge.

- (2) In any other case, when the clerk is presented with a document or item that cannot be scanned and that is required to be filed in another Division, the clerk will enter a notice of the party's attempt to file the document or item in the docket and the party will have a grace period of three (3) business days to deliver the document or item to the Division of venue or to another Division as directed by the clerk.

*The purpose of this Rule is to avoid the need to mail voluminous exhibits from Division to Division and to avoid the corresponding risk of losing the documents.*

(c) Papers presented for conventional filing shall be presented to the clerk and not to any judge.

...

#### **77.6 DOCUMENTS STRICKEN FROM THE RECORD.**

**When a judge orders that a document is stricken from the record, the judge may direct the clerk to seal the document. A document that is stricken will not be considered by the Court, but it must remain in the record of the case for purposes of appellate review.**

*This new Rule will ensure that a document is never deleted from the electronic record. Thus, the record is preserved for appellate review. Sealing of a stricken document is permitted but not required.*

...

### **RULE 83**

#### **DISTRICT COURT RULES AND DIRECTIVES**

...

### 83.3 ADMISSION TO AND PRACTICE IN THIS COURT.

...

~~(c) Practice in this Court. Except as otherwise provided in this Rule, only members of the Bar of this Court who are classified as active members in good standing by the State Bar of Montana shall practice in this Court. An attorney's continued registration in the Court's CM/ECF system is not evidence of good standing.~~

(1) Except as otherwise provided in this Rule, only members of the Bar of this Court who are classified as active members in good standing by the State Bar of Montana shall practice in this Court. An attorney's continued registration in the Court's CM/ECF system is not evidence of good standing.

(2) When the clerk receives notice that a member of the Bar of this Court is not in good standing, the clerk shall notify the attorney that he or she may not practice in this Court. The attorney may recommence practice in this Court when the clerk receives proof of reinstatement to good standing.

*Full disciplinary procedure is disproportionate in situations where, for example, an attorney is not in good standing because of a failure to pay dues or satisfy CLE requirements. The proposed amendment gives notice to such an attorney that s/he may not appear in this Court, as well as providing a means for the attorney to obtain reinstatement without going through a hearing or other more complicated procedures.*

...

**(f) Duties of local counsel.** Unless otherwise ordered, local counsel designated pursuant to this Rule **83.3(e)** shall sign all pleadings, motions and briefs. In all cases, local counsel shall participate actively in all phases of the case, including, but not limited to, attendance at depositions and court proceedings, preparation of discovery responses and briefs, and all other activities to the extent necessary for local counsel to be prepared to go forward with the case at all times. The Court, upon motion by local counsel, may ~~waive this Rule~~ **suspend or modify the duties of local counsel, but only** on a showing of extraordinary circumstances. Upon waiver of this Rule by the Court, all documents subsequently filed shall be signed by counsel actively involved in the case. **Upon such**

suspension or modification, the Court shall clearly set forth the duties of local counsel.  
~~Such a waiver~~ Suspension or modification is not to be routinely granted.

*The current reference to "this Rule" is too broad, as only subsection (e), governing admissions pro hac vice, is pertinent. The amendments also clarify that the Court may take action short of suspending local counsel's duties altogether, but only on a showing of extraordinary cause.*

...

### **83.9 ~~WITHDRAWAL FROM CASE AND SUBSTITUTION OF ATTORNEYS.~~ SUBSTITUTION AND WITHDRAWAL OF COUNSEL.**

**(e a) Substitution of Counsel.** When a party changes attorneys, a notice of substitution signed by the incoming and the outgoing attorney must be filed by the incoming attorney. The incoming attorney is responsible for ensuring that he or she is added to the case for the correct party or parties and is properly designated to receive notices of electronic filing. The incoming attorney must also verify that electronic service on outgoing attorneys is properly terminated.

*Current subsection (c) is relocated to subsection (a) because the substitution procedure is more common than withdrawal. The amendments are proposed because the Clerk's Office reports some difficulty in managing attorneys who substitute in or out of cases. The amendments clarify that the incoming attorney must file the notice of substitution and also must ensure that he or she will receive electronic service and attorneys no longer involved in the case will not.*

**~~(a) Leave of Court and Notice.~~** ~~Except as provided in subsection (c), no attorney may withdraw from any case, civil or criminal, except by leave of Court after filing a motion to withdraw and:~~

- ~~(1) — serving notice on both the attorney's client(s) and opposing counsel and showing good cause, or~~
- ~~(2) — attaching to the motion as an exhibit the client's written consent to the withdrawal, signed by the attorney and the client(s).~~

**~~(b) Responsibility of Attorney.~~** ~~When an attorney of record for any reason ceases~~

~~to act for a party, the party must immediately retain another attorney or appear pro se. Until the Court authorizes withdrawal, the authority and the responsibility of the attorney shall continue for all proper purposes.~~

**(b) Withdrawal of Counsel. When an attorney's withdrawal will leave any party without counsel for any period of time, the attorney may withdraw only by leave of Court. A motion for leave to withdraw must be accompanied by:**

- (1) an affidavit of counsel stating that the party has been advised of its obligation immediately to retain new counsel or appear pro se; and**
- (2) (A) the party's written consent to counsel's withdrawal, signed by the attorney and the party; or**  
**(B) a showing of good cause and an affidavit showing that the motion to withdraw was personally served on the party at least ten business days prior to filing the motion to withdraw.**
- (3) When counsel's motion is not supported by the party's written consent, counsel may show good cause to withdraw by filing an ex parte affidavit separately from the motion and other supporting documents.**

*The proposed amendments combine current subsections (a) and (b). They also clarify counsel's responsibility to advise the party of its obligations when counsel withdraws and personally to serve the motion to withdraw on the party before filing with the Court. Finally, they authorize ex parte filing where a client does not consent to withdrawal so that an attorney does not prejudice the client by explaining on the public record the reasons for withdrawal.*

...

## **83.12 GUARDIANS AD LITEM.**

**(a) Procedure for the Appointment of Guardian Ad Litem.** Guardians ad litem may be appointed ex parte at any time upon the presentation to the judge assigned to the case of a sworn petition showing a proper case for the appointment. The petition shall be filed with the order of appointment. **The Court may appoint a guardian ad litem sua sponte.**

*The proposed amendment clarifies that the Court may act on its own motion.*

...

...

#### **83.14 SUSPENSION, DISBARMENT AND DISCIPLINE OF ATTORNEYS.**

...

##### **(i) Report and Disposition.**

(1) If, after review of the investigation report, the Chief Judge determines the complaint is unfounded or of a trivial nature, the grievance shall be dismissed.

**(2) If, after review of the investigation report, the Chief Judge determines that a sanction is warranted but further proceedings are not, the Chief Judge may make an appropriate disposition with the agreement of the attorney so disciplined.**

*An intermediate step, corresponding to current Rule 83.14(h)(4)(B), permits the matter to be concluded with some disciplinary action but not a formal proceeding on a complaint.*

~~(2)~~ **3** If, after review of the investigation report, the Chief Judge determines the matter warrants further consideration, the Chief Judge shall then either delegate a prosecutor to file a complaint pursuant to subsection (j) or refer the matter to the appropriate state or other disciplinary body.

...

#### **83.16 APPOINTMENT OF COUNSEL IN CIVIL ACTIONS.**

*As it currently stands, Rule 83.16 is based, almost verbatim, on a rule proposed by the Ninth Circuit Local Rules Advisory Board on April 17, 2002. On August 30, 2004, the Ninth Circuit Task Force on Self-Represented Litigants – specifically, the Subcommittee on the Appointment of Counsel – issued an*

*extensively revised version, describing the Advisory Board's version as "unnecessarily complex" and suggesting a more "concise" Rule. The following amendments are based primarily on the Task Force's suggested revisions. (The Rule still runs a few pages, but it is much improved.)*

*Additionally, a few issues have been addressed based on the past few years' experience with the Rule and some comments made by appointed attorneys. These changes are explained below. Because the amendment is generally stylistic, changes that are solely stylistic are not specifically pointed out.*

**(a) Civil Pro Bono Panel.**

**(1) The Civil Pro Bono Panel is the Court's resource for identifying those members of the Bar of this Court who are willing to make a pro bono contribution to the District of Montana. Names of Panel members shall not be publicly disclosed or disseminated.**

*This provision is new but conforms with current practice.*

**(2) An attorney may participate on the Panel by writing to the Chief Judge a letter setting forth:**

*The requirement that counsel "apply" for membership on the Panel using a form provided by the Clerk of Court is deleted. The Panel is not meant to be an exclusive club.*

**(A) the attorney's number of years in practice, including any particularly relevant litigation background or law school preparation; and**

*The current Rule asks individual attorneys to describe their prior civil trial experience. A more general statement of experience will communicate essentially the same information.*

**(B) the attorney's preference for appointment among various types of actions (e.g., social security appeals, employment discrimination actions, civil rights actions, habeas corpus).**

**(3) An attorney may, by letter, withdraw from the Panel at any time.**



*The provision allowing attorneys to amend their "applications" is deleted.*

- (4) Participation on the Panel is not a prerequisite to appointment. The Court's practice will be to contact counsel before appointment to determine counsel's ability and willingness to accept appointment. However, the Judge shall have discretion to select any member of the Bar of this Court.**

*Previously subsection (c)(6).*

**(b) Request for Counsel.**

- (1) Counsel may be appointed on a pro se party's motion for the appointment of counsel.**
- (2) With the party's consent, counsel may be appointed on the Court's own motion. In social security disability cases, counsel shall not be appointed unless the party has been advised that counsel may be entitled to obtain compensation from any award of benefits.**

*Current subsection (c)(1)-(3) is deleted. Most parties who move for counsel don't have access to the Rule's unnecessarily cumbersome requirements. The first sentence of amended subsection (b)(2) is currently located at subsection (c)(5), the second sentence at subsection (g)(1).*

**(d) Factors Considered. The Judge shall consider the following factors in determining whether counsel should be appointed:**

- (1) The potential merit of the claim or claims;**
- (2) The nature and complexity of the action, both factual and legal, including the need for factual investigation and expert witnesses;**
- (3) The likelihood of conflicting testimony calling for a lawyer's presentation of evidence and cross-examination;**
- (4) The party's ability to prepare and present the case pro se;**
- (5) The party's inability to obtain counsel by other means;**

**(6) The extent to which the interests of justice will be served by appointment of counsel, including the benefit the Court may derive from counsel's assistance;**

**(7) The extent to which counsel might be appointed for a limited purpose rather than full representation; and**

*This factor will permit the Court to consider appointing counsel for a limited purpose. The practice of limiting representation is controversial but has worked well in practice for us. Counsel has, in the past, been appointed solely for the purpose of assisting a pro se plaintiff in preparing an amended pleading. Counsel might also be appointed, for example, to take a limited number of depositions or to act for the party in a settlement conference. An amendment reflecting limited-scope representation is also made in the first phrase of amended subsection (f), below.*

**(8) Any other factors relevant to the exercise of the Court's discretion.**

**(e) Selection and Appointment.**

**(1) When the Judge concludes that appointment is warranted, an attorney or firm shall be selected by the Judge.**

**(2) The Judge shall issue an Order:**

**(A) appointing an individual attorney;**

**(B) staying proceedings for at least forty-five (45) days; and**

**(C) setting a deadline for the parties to file, jointly or separately, a status report setting forth a proposed plan and schedule for disposition of the remainder of the case.**

**(3) The clerk shall immediately provide to appointed counsel courtesy copies of the order of appointment and all documents filed in the case prior to the date of appointment.**

**(f) Scope of Appointment. Except as the scope of representation may be expressly limited by the Judge, counsel shall represent the party in the action through final**

judgment or other resolution of the case in the District Court. Counsel may but need not represent the party on appeal. Appointment is made only for purposes of the case in which the Order is entered.

*See explanatory note to amended subsection (d)(7), above.*

(g) Notice of Appearance. Within three business days of entry of the Order Appointing Counsel, the appointed attorney shall file a Notice of Appearance.

(h) Relief from Appointment. An appointed attorney may move to be relieved of an order of appointment pursuant to Montana Rule of Professional Conduct 1.16 or on the following grounds:

- (1) conflict of interest;
- (2) personal incompatibility or a substantial disagreement on litigation strategy or tactics;
- (3) the party is proceeding for purposes of harassment or malicious injury, or that the party's claims or defenses are not warranted under existing law and cannot be supported by good faith argument for extension, modification or reversal of existing law; or
- (4) any other basis that, in the discretion of the presiding Judge, justifies withdrawal.

*Two grounds for relief from appointment, current subsections (d)(1)(B) and (D), are proposed to be deleted. They are:*

- the attorney believes that he or she is not competent to represent the party in the particular type of action assigned; and*
- the attorney lacks the time necessary to represent the plaintiff in the action because of the temporary burden of other professional commitments involved in the practice of law.*

*Generally, the Court consults with counsel prior to issuing an order of appointment. Competence or time issues can both be addressed then. Even if there is no consultation, the automatic 45-day stay provision of amended subsection (e)(2)(B) gives counsel a minimum of thirty days to request additional time to prepare or to clear away the "temporary" burdens contemplated by the current rule.*

*Current subsections (d)(2)-(6) and (e) are deleted as unnecessary. Rule 83.9 sets forth the procedure for withdrawal of counsel.*

**(i) Expenses.**

**(1) Counsel shall seek payment of costs from the adverse party if entitled to do so.**

**(2) With prior approval of the Court on a properly documented motion, counsel may obtain reimbursement for expenses reasonably incurred by appointed counsel or by counsel associated by appointed counsel. Reimbursement shall be made from the Non-Appropriated Funds in an amount up to \$3,000.00. Reimbursement for expenses over \$3,000.00 must be approved by the Committee on Non-Appropriated Funds.**

**(3) The Court will not reimburse counsel:**

**(A) for costs personally taxed against appointed counsel or paid by the adverse party; or**

**(B) where a judgment or settlement was obtained for at least \$6,000.00.**

**(4) Reimbursement will generally be made at the conclusion of the representation. Where reimbursement is made on an interlocutory basis and appointed counsel later obtains a judgment or settlement of at least \$6,000.00, counsel shall reimburse the Court for costs it has already paid to counsel.**

*The current Rule contemplates reimbursement for expenses. The \$3,000.00 threshold, beyond which special authorization is required, is new.*

**(j) Fees. An appointed attorney may seek fees from the adverse party as provided by law.**

*The amendment clarifies that appointment under this Rule does not preclude an appointed attorney from seeking payment of fees.*

**(i) Educational Panels.**

- (1) ~~The Court authorizes the establishment of panels of attorneys and others experienced in the preparation and trial of the most common types of civil actions involving pro se parties brought before the Court (e.g., social security appeals, employment discrimination actions, civil rights actions, habeas corpus actions).~~
- (2) ~~The Educational Panels are authorized to conduct educational programs for attorneys on the Civil Pro Bono Panel to train and assist said attorneys in the preparation and trial of the most common types of civil actions involving pro se parties brought before the Court.~~
- (3) ~~The Clerk of Court is authorized to maintain a list of attorneys experienced in the preparation and trial of the most common types of civil actions involving pro se parties brought before the Court, whether or not such attorneys serve on an educational panel or the Pro Bono Panel. The Clerk shall obtain the prior consent of the attorneys to their inclusion on such lists. Such attorneys may be consulted by attorneys on the Civil Pro Bono Panel as necessary and appropriate.~~

*The Court has taken no action on these Educational Panels. If no action will be taken, the provisions should be deleted.*

## **CHAPTER III. CRIMINAL RULES**

### **CR 1**

#### **SCOPE**

#### **CR 1.1 SCOPE OF CHAPTER III.**

This chapter applies in all criminal proceedings in the District of Montana. Local Rules 5.2, 6, 7.2, 7.3, 7.4, 7.5, 10, 48.2, 54, 77, and 83 also apply to criminal proceedings to the extent they are not inconsistent with federal law or with other Local Rules in this chapter.

*Rule 5.2 is added. It addresses service where both electronic and conventional filers are involved in a case.*

...

## **RULE CR 12**

### **MOTIONS – NOTICE AND OBJECTIONS**

...

#### **CR 12.2 NOTICE TO OPPOSING ~~COUNSEL~~ PARTIES AND OBJECTIONS.**

Within the text of each motion submitted to the Court for its consideration, counsel shall note that all parties have been contacted concerning the motion, and whether any party objects to the motion.

*"Party" includes counsel, but "counsel" doesn't seem to include a pro se party.*

...

## **RULE CR 17.1**

### **PRETRIAL CONFERENCES**

...

#### **CR 17.1.2 SETTLEMENT CONFERENCES IN COMPLEX CRIMINAL CASES.**

...

**(i) Discretion of Trial Judge.** Nothing in this Rule shall be construed to limit in any way the discretion of the trial judge under ~~Federal Rule of Criminal Procedure 11(e)~~ **Fed. R. Crim. P. 11(c)(3).**

*Correction of technical error.*

...

## **RULE CR 49**

### **SERVING AND FILING PAPERS**

...

#### **CR 49.2      MOTIONS UNDER 28 U.S.C. § 2255.**

**Except as otherwise ordered by the presiding Judge, documents filed in connection with proceedings under 28 U.S.C. § 2255 need not be served on other defendants or defense counsel. Where a movant appears pro se, movant's trial and appellate counsel need not be served.**

*This proposed Rule formalizes current practice.*

## **RULE CR 58**

### **MISDEMEANORS**

#### **CR 58.1      FIXED SUMS PAYABLE IN LIEU OF APPEARANCE.**

In criminal cases with ~~suitable misdemeanor or~~ petty offense charges at issue, defendants shall be permitted to pay a fixed sum in lieu of appearance. Acceptance and payment of such fixed sum shall terminate the action. However, if payment of the fixed sum is not timely made, a Magistrate Judge may, in his or her discretion, fix a higher amount so long as the fixed sum does not exceed the maximum fine which could be imposed.

*The proposed amendment is intended to avoid the possibility that a defendant might, merely by sending in payment of a fixed sum, inadvertently plead guilty to an offense that might be characterized in some contexts as a serious misdemeanor.*

...

## **APPENDIX**

### **SAMPLE FORMS**



...

**FORM D**  
**PROPOSED FINAL PRETRIAL ORDER**  
**L.R. 16.4**

...

**XIII. Deposition Excerpts and Summaries.**

Defendant will show an excerpt from the video deposition of Harmon Highline, see Highline Dep. at 6:35-15:57. Plaintiff objects under Fed. R. Evid. 601 and 602. No summaries will be used.

*This amendment conforms with the amendment to Rule 16.4(b)(13).*

~~XIII~~ **XIV.**     **Estimate of Trial Time.**

...

...  
**FORM E**  
**ONE PARTY'S WITNESS LIST**  
**L.R. 16.4(b)(10)**

**DEFENDANT'S WITNESS LIST - WILL CALL**

Case Name: Jones v. Westbest Nursing Home  
Case Number: CV 00-001-TD-XYZ

<b>Name</b>	<b>Address &amp; Telephone</b>	<b>Manner of Presentation</b>	<b>Expert?/ Date of Report</b>	<b>Designated Excerpt</b>	<b><u>Objections</u></b>
John Appleseed	Westbest Nursing Home 1935 Third Avenue East Polson, Montana 59845 (406) 694-5200	in person	yes; 1-17-02		
Billy Bathgate	9999 Bronx Ave. Brooklyn, NY 10101	<del>read deposition</del> live video conference	no		
Harmon Highline Highline Experts, Inc.	669 Killebrew Court P.O. Box 9999 Fort Sumter, SC 30303	video deposition	yes; 1/29/02 supp. 03/01/02 2d supp. 06/07/02	6:35-15:57	<b><u>601, 602</u></b>

Name	Address & Telephone	Manner of Presentation	Expert?/ Date of Report	Designated Excerpt	<u>Objections</u>
<del>Sam Surgeon, M.D.</del>	<del>Surgeon, Inc. 1111 Boxx St. San Francisco, CA 94122</del>	live video conference	yes; 02/28/02		

*Sam Surgeon is deleted so that the list will fit on one page of text and Billy Bathgate is now testifying by video so that the form will show different means of presenting testimony. The major change is the addition of a column for Objections, which is now required by Rule 16.4(b)(13). The same change will be made to the Defendants May Call Witness List, but it is not shown here.*

...  
**FORM H**  
**MOTION BY ATTORNEY FOR LEAVE TO FILE CONVENTIONALLY**  
**L.R. 1.6(d)**  
**(for use after January 10, 2007)**

Clarence Darrow  
Darrow & Kunstler, PLLC  
24 Main St.  
Two Dot, MT 59085  
(406) 999-2222  
scopes@evolve.com  
Attorney for Defendant Webster

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

TWO DOT DIVISION

MARY BROWN,	)	Case No. CV 99-316-TD-XYZ
	)	
Plaintiff,	)	
	)	
vs.	)	MOTION BY ATTORNEY FOR LEAVE
	)	TO FILE CONVENTIONALLY IN THIS
JENNIFER JONES; PAUL SMITH; DAN	)	CASE
WEBSTER,	)	
	)	
Defendants.	)	
_____	)	

I, Clarence Darrow, hereby move the Court for leave to file documents conventionally in this case because:

☐ high-speed Internet service is not available in the area where I practice.

☐ my office does not yet have high-speed Internet service and I do not have ready access to a Kinko's or other site that has high-speed Internet service.

☒ I and/or my staff have not yet taken the Court's CM/ECF training. An appointment will be scheduled and kept.

~~☐ this is a Social Security case and the nature of the case makes electronic filing infeasible.~~

*See Clerk's Policy Directive No. 1.*

☐ of the following special circumstances: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

DATED this 16 day of January, 2007.

\_\_\_\_\_  
[conventional hand signature]  
Clarence Darrow  
Attorney for Defendant Webster